

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN DAVID EVERETT,

Plaintiff,

v.

PIERCE COUNTY PROSECUTING
ATTORNEY'S OFFICE *et al.*,

Defendants.

Case No. C07-5137RBL

ORDER TO SHOW CAUSE

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff was given leave to proceed *in forma pauperis*. Plaintiff is challenging the length of a criminal sentence he has received in the Pierce County Superior Court.

The court now **ORDERS PLAINTIFF TO SHOW CAUSE** why this action should not be dismissed prior to service. When a person is challenging the very fact or duration of his physical imprisonment, and the relief he seeks will determine that he is or was entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully exhausted available state remedies **has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of**

1 **a writ of habeas corpus."** Heck v. Humphrey, 512 U.S. 477, 487 (1994)(emphasis added). The court
2 added:

3 Under our analysis the statute of limitations poses no difficulty while the state challenges are
4 being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of action for
5 damages attributable to an unconstitutional conviction or sentence does not accrue until the
conviction or sentence has been invalidated.

6 Id. at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be made
7 based upon whether 'the nature of the challenge to the procedures [is] such as necessarily to imply the
8 invalidity of the judgment.' *Id.* If the court concludes that the challenge would necessarily imply the
9 invalidity of the judgment or continuing confinement, then the challenge must be brought as a petition for a
10 writ of habeas corpus, not under § 1983." Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir.1997)
11 (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

12 Plaintiff has not indicated he has received relief in habeas corpus. At the current time it appears he
13 fails to state a claim. Plaintiff should show cause why this action should not be dismissed for failure to
14 state a claim on or before **June 29, 2007**. The Clerk is directed to send plaintiff a copy of this to plaintiff
15 and note the **June 29, 2007**, due date on the court's calendar.

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17 DATED this 25 day of May, 2007.

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20 /S/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge
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